

BOARD OF APPEALS  
Diane R. Gordon, Co-Chair  
Harry Miller, Co-Chair  
Bailey S. Silbert

# *Town of Brookline* *Massachusetts*



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Patrick J. Ward, Secretary

**TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 060077**

Petitioner, Phillip Sher, applied to the Building Commissioner for permission to extend the existing driveway at his home at 15 Penniman Road. The application was denied and an appeal was taken to this Board.

On November 16, 2006, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and originally fixed January 18, 2007, at 7:00 p.m., as the time and place of a hearing on the appeal in the Selectmen's Hearing room on the sixth floor of the Town Hall. Notice of the scheduled hearing was mailed to the Petitioner, to his attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published December 28, 2006 and January 4, 2007 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

## **NOTICE OF HEARING**

**Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:**

Petitioner: **Phillip Sher**

Location of Premises: **15 PENNIMAN ROAD BRKL**  
Date of Hearing: **01-18-07**  
Time of Hearing: **7:00 p.m.**  
Place of Hearing: **Selectmen's Hearing Room, 6<sup>th</sup>. Floor**

A public hearing will be held for a variance and/or special permit from: **1) 6.04.5.c.2; Side Yard Setback, Variance Required; 2) 6.04.9.b; Drainage, surfacing and maintenance of parking lots, Variance Required and 3) 8.02.2; Alteration or Extension, Special Permit Required** of the Zoning By-Law to extend the existing driveway per plans at **15, PENNIMAN ROAD BRKL**.

Said Premise located in an **S-10** district.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

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Harry Miller  
Bailey Silbert**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chair, Diane Gordon and Board members Enid Starr and Bailey Silbert.

Phillip Sher, owner of the subject property, appeared before the Board with his contractor Andrew Marvel. Mr. Marvel stated that while doing construction work at Mr. Sher's home he added a small triangle of concrete to the existing drive to facilitate safer exiting and entering the garage. Since the area was so small he didn't believe he needed a building permit. Mr. Marvel stated that although he knew of the Stormwater Management By-Law, he has not yet started that process. Mr. Marvel stated that he believed he needed relief from side-yard setback as well as alteration of a pre-existing non-conforming structure, the driveway. Mr. Marvel stated that the home abuts two properties along the Northwestern lot line. One property is for sale and the owner is



living in Washington D.C. and the other is owned by Mr. Lucas who has concerns about the alteration.

The Chair then asked whether anyone wished to speak in favor or in opposition to the proposal. Alan Lucas, a resident of 404 Clinton Road, rose to speak in opposition to the proposal. Mr. Lucas stated that he was a direct abutter to the Sher property and he wanted the set-backs complied-with along his property line. He stated that it might impose a hardship for his neighbor but he feels Mr. Sher could address his turnaround issue further down the driveway and not add five feet of concrete adjacent to his property. Mr. Lucas commented that the previous owners did not have a problem turning their vehicles around. Mr. Lucas then provided photographs of a car parked on the expanded driveway and he contended that the additional concrete was intended to provide additional parking. Mr. Lucas stated that the disturbed area had previously been planted with vegetation that obscured his view of Mr. Sher's driveway. Mr. Lucas suggested that the Board conduct a site visit so they could fully appreciate the situation. No-one else was in favor or opposed to the proposal.

Polly Selkoe, Assistant Director for Regulatory Planning reviewed the Planning Board report. She stated that the Planning Board is not opposed to the extension of the driveway to create a more suitable maneuvering aisle for the two garage parking spaces. The extension is relatively minimal and makes maneuvering in and out of the existing parking spaces easier for the residents of the dwelling. She stated that the Planning Board was not sympathetic to the idea that the extension would create additional parking area since any vehicle parked outside the Sher residence would be visible to Mr. Lucas. Ms. Selkoe stated that the Planning Board felt additional screening and drainage would improve the driveway situation. She stated that the Planning Board recommended that the applicant work with the Building and Engineering Department to determine what needs to

be done to satisfy drainage concerns with respect to the driveway and implement a corrective plan.

Ms. Selkoe described the relief required as follows:

**Section 6.04.5.c.2 – Side Yard Setback**

**Section 6.04.9.b – Drainage, surfacing and maintenance of parking lots**

The area of the lot not landscaped and so maintained, including driveways, shall be graded, surfaced with asphalt or other suitable material, and drained to the satisfaction of the Building Commissioner, to the extent necessary to prevent nuisance of dust, erosion, or excessive water flow across public ways.

	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Finding</u>
Side Yard Setback (parking area)	5'	0.8 feet to 7 feet	0.8 feet	<u>Special Permit/ Variance*</u>

\*Under Section 5.43, the Board of Appeals may waive the yard and setback requirements if counterbalancing amenities are provided.

**Section 8.02.2 – Alteration or Extension**

A special permit is required to alter or enlarge any pre-existing non-conforming use or structure.

Ms. Selkoe said the Planning Board recommends approval of the plans entitled “15 Penniman Road: Driveway Extension,” prepared by EMB Everett M. Brooks Co. Surveyors and Engineers, dated 19 September, 2006, subject to the following conditions:

1. Prior to the issuance of a building permit, a drainage plan or similar document indicating drainage details on the site, shall be submitted to the Director of Engineering for review and approval, and such plan shall be implemented.
2. Prior to the issuance of a building permit, a final landscaping plan indicating the location and types of plantings and/or fencing to screen the parking area shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan showing dimensions stamped and signed by a registered architect or land surveyor, and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.



Frank Hitchcock, Senior Building Inspector, spoke on behalf of the Building Commissioner. He restated that he made a site visit to the property and that in his opinion the garage is not original to the house. He stated that entry to the garage could be problematic. Mr. Hitchcock stated that while remodeling work was being done to the home, Mr. Lucas came to the office and informed them that the driveway was being extended. Mr. Sher was then informed that he was in violation of the Zoning By-Law, hence his appearance before the Board. Mr. Hitchcock stated the zoning issues were the required five foot setback for the driveway and the requirement for proper drainage. He stated that the Building Department took no position on the proposal and has no objection to the drainage system subject to approval by the Town Engineering Department.

Board Member Enid Starr requested clarification as to what was added to the existing driveway. Mr. Marvel referred to the plan dated September 19, 2006 by Everett M. Brooks Co., 49 Lexington Street, West Newton, MA 02465. The Board reviewed the plans with Mr. Marvel, Mr. Sher and Mr. Lucas.

Mr. Sher stated that he has a landscape architect and was open to any recommendation to alleviate Mr. Lucas' concern. He said removal of the concrete extension would continue the problem of exiting and entering the garage.

The Chair suggested several alternatives which might ameliorate the situation. Pavers were suggested but Mr. Sher stated that wasn't possible since the entire driveway was concrete. Mr. Lucas stated that pavers might look better since all he sees from his home now is concrete where before vegetation blocked his view. Mr. Sher stated that they moved a large rhododendron as part

of this project. Mr. Lucas reiterated that he felt the work was done to create an additional parking space.

Ms. Starr suggested that the Board conduct a site visit to better evaluate the situation. The Chair then informed both Mr. Sher and Mr. Lucas that the Board would visit the site and that they would be advised of the date and were welcome to attend. She stated that when the Board reconvened that they would continue deliberations on the matter but would not take further testimony. On 25 January the Board visited the subject property and discussed several options regarding the driveway.

On 2 March at 7:00 pm the Board reconvened to deliberate and decide the matter. Dov Kram, Project Manager for Marvel Construction appeared in Mr. Sher's stead. Mr. Kram presented a revised site plan of the property. He stated that Mr. Sher proposed to remove a portion of the concrete drive and plant vegetation that would screen Mr. Lucas' view of his drive and further provide protection for his children from the abutter's fence while they play basketball in the drive. The revised plan is dated 28 February 2007 and was prepared by Everett M Brooks Co. of 49 Lexington Street, West Newton, MA 02465.

The Board having deliberated on this matter and having considered all the foregoing testimony, concluded that it is desirable to grant the relief requested for the driveway extension under § 6.04.5.c.2 (Side Yard Setback), § 6.04.9.b (Drainage) and § 8.02.2 Alteration of Pre-existing, Non-conforming Condition), The planting of vegetation constitutes the counterbalancing amenity required under § 5.43 of the Zoning Bylaw. The Board made the following findings pursuant to § 5.09 and 9.5 of the zoning by-law:

1. The specific site is an appropriate use for such a use, structure, or condition.
2. The use as proposed by the Petitioner will not adversely affect the neighborhood.



3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

- 1 Prior to the issuance of a building permit, a drainage plan or similar document indicating drainage details on the site, shall be submitted to the Director of Engineering for review and approval, and such plan shall be implemented.
- 2 Prior to the issuance of a building permit, a final landscaping plan indicating the location and types of planting to screen the parking area shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
- 3 Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan showing dimensions stamped and signed by a registered architect or land surveyor, and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

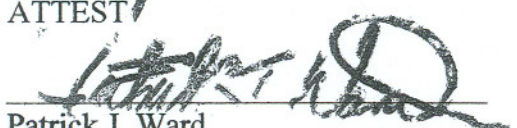
Unanimous Decision of  
The Board of Appeals

  
Diane R. Gordon

Filing Date: April 17, 2007

A True Copy

ATTEST

  
Patrick J. Ward  
Clerk, Board of Appeals